IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Balu Ram Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.74/2006

DATE OF ORDER :: November 14, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Umesh Shrimalee, for the petitioner.
Mr.Ashok Upadhyaya, P.P.
Mr.D.S.Rathore for the complainant.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 07.1.2006 passed by the Additional Sessions Judge No.1, Chittorgarh (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 28.10.2005 passed by the Judicial Magistrate, Chittorgarh (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the petitioner, Public Prosecutor for the State and the counsel appearing for the complainant non-petitioner No.2. Carefully gone through the

orders passed by both the courts below.

Learned counsel for the petitioner submits that no reasons have been assigned by the trial court with regard to the negative final report submitted by the police while taking cognizance. He has relied on a decision of Hon'ble Supreme Court in Sampat Singh & Ors. vs. State of Haryana & Ors. (1993) 1 SCC 561 and two decisions of this Court in Bhagwan Sahai Khandelwal and Ors. vs. State of Rajasthan & Anr., 2006(1) Cr.L.R.(Raj.) 489 and Gopal Sharma & Ors. vs. State of Rajasthan, 2005(2) Cr.L.R. (Raj.) 1687.

On the perusal of the order of the trial court as also the revisional court, it appears that the police has filed the FR and the trial court carefully gone through the FR, the statement of the witness complainant AW-1 Ramprasad and on the basis of material placed including the statement of the complainant, came to the conclusion that a will was executed by Smt. Kusumi in favour of Narayan father of the complainant on 16.2.1985, however, the petitioner after death of father of complainant-non-petitioner No.2, got “patta” in his favour on 19.12.1985 by forging the document. The trial court prima facie found that there is an evidence of cheating, forging the document against the petitioner and on the basis of material placed before it, the

trial court accepted the protest petition filed by non-petitioner No.2 and rejected the negative final report filed by the police. Learned counsel for the petitioner submits that whether will is forged or not could not be concluded by the criminal court.

In Jagdish Ram vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

In view of the aforesaid decision of the Hon'ble Supreme Court in Jagdish Ram vs. State of Rajasthan (supra), the

judgments relied on by the learned counsel for the petitioner are of no help and turn on their own facts.

Consequently, the petition is dismissed. Ad interim stay order dt. 2.2.2006 is vacated.

[H.R.PANWAR],J.

m.asif/-